United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

602

BRIEF FOR APPELLEES

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 22,843

JOSEPH MEEK, et al.,

Appellants,

v.

WALTER E. WASHINGTON, et al.,

Appellees.

Appeal From The United States District Court
For The District Of Columbia

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the District of Columbia Council has the authority, under D. C. Code (1967), § 1-226, to promulgate housing regulations requiring that each dwelling unit in the District of Columbia contain a complete bathroom for the exclusive use of the occupants of such dwelling unit.

2. Were appellants, as tenement owners, denied due process of law when the District of Columbia Council, without a public hearing before the Council, promulgated housing regulations requiring that each dwelling unit in the District of Columbia contain a complete bathroom for the exclusive use of the occupants of such dwelling unit?

3. Whether Sections 2403.21 and 5105 of the District of Columbia Housing Regulations, which require that each dwelling unit contain a complete bathroom for the exclusive use of the occupants of such dwelling unit, have a rational relationship to the promotion of the public health and welfare.

This case has not been before the Court on any prior occasion.

I N D E X

SUBJECT INDEX

CASES CITED

UNITED STATES CODE CITED

DISTRICT OF COLUMBIA CODE, 1967, CITED

DISTRICT OF COLUMBIA ZONING REGULATIONS

DISTRICT OF COLUMBIA HOUSING REGULATIONS

OTHER AUTHORITIES CITED

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* Cases chiefly relied upon are marked by asterisks.

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BRIEF FOR APPELLEES

STATEMENT OF THE CASE

On October 29, 1968, appellants, all of whom are owners of either rooming houses or tenement houses situated in the District of Columbia, filed in the court below a complaint, with attached exhibits "A" through "K", seeking to restrain certain officials of the District of Columbia Government from enforcing two sections of the Housing Regulations of the District of Columbia, to wit:

"2403.21. On and after January 1, 1968, each dwelling unit shall contain a lavatory, water closet and bathing facility for the exclusive use of the occupants of such dwelling unit: Provided, That roomers renting space within a dwelling unit shall be permitted to share the use of the water closet, lavatory and bathing facility to the extent authorized by Section 2403.22. (C. O. 67-108.)"[1]

and

"Section 5105. On or after January 1, 1968, the use of any building or other structure or parts thereof as a tenement unit or tenement house is prohibited. (C. O. 67-109.)"[2]

The complaint alleged that the above-quoted Housing Regulations are invalid because the newly-created District of Columbia Council enacted them without affording appellants a public hearing before the Council to present their views. Shortly thereafter, appellants filed

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[1] A "dwelling unit" is defined by § 1102 of the Housing Regulations as "* * * any habitable room or group of habitable rooms located within a residential building and forming a single unit which is used or intended to be used for living, sleeping, and the preparation and eating of meals. * * *"

[2] A "tenement" is defined by § 1102 of the Housing Regulations as "* * * a dwelling unit consisting of one or more habitable rooms under the exclusive control of the tenant thereof, who does not also have in connection therewith bathroom facilities under his exclusive control. * * *"

an amendment to the complaint, adding the allegation that the District of Columbia Council was without statutory authority to promulgate the regulations in question.

The complaint and attached exhibits reveal that Sections 2403.21 and 5105 of the Housing Regulations were enacted by the District of Columbia Council on November 21, 1967. (Exhibit "C".) Several months prior thereto, at the direction of the former Board of Commissioners, a public hearing was held on July 7, 1967, on the question of whether these regulations should be adopted. (Exhibits "A" and "B".)

Of the 31 persons who made oral statements at the hearing, the majority, consisting mostly of tenement owners and representatives of owners, were opposed to the adoption of the regulations on the ground that installation of bathroom facilities would be very expensive and that the expense entailed would have to be absorbed by increased rents, thus placing a hardship on low-income tenants. The tenement owners further complained that in some tenement buildings there was insufficient space available to add a bathroom for each tenement unit. Finally, the owners noted that, if they chose to convert their tenement units into rooming units (for which individual private bathrooms are

not required), low-income tenants would suffer by being forced to eat in restaurants.[3]

Mr. Tudor Strang, then Deputy Superintendent of the Housing Division of the District of Columbia Department of Licenses and Inspections, speaking in favor of the proposed regulations, noted that between 1955 and 1967 the number of tenement houses in the District of Columbia decreased from 3,347 to 763 and, over the same period, the number of persons living in tenement units decreased from about 30,000 to approximately 7,600.[4] (Exhibit "B", p. 7.) Mr. Strang also stated that, in November 1966, the Department of Housing and Urban Development issued guidelines to municipalities regarding minimum housing standards necessary to qualify municipalities for federal grants and loans for urban renewal projects.[5] These minimum standards require a "fully equipped bath and toilet facility for every dwelling unit." (Exhibit "B", pp. 8-9.)

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[3] A "rooming unit" is defined by § 1102 of the Housing Regulations as "* * * any habitable room or group of habitable rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for the preparation or eating of meals."

[4] Since May 12, 1958, construction of new tenement houses and conversion of existing buildings into tenement houses has been prohibited. See Zoning Regulations of the District of Columbia, §§ 7508.1 and 7508.2.

[5] See 42 U. S. C. § 1451(c).

And Mr. John Bunk, Chief of the District of Columbia Bureau of Public Health, representing Dr. Murray Grant, the Director of Public Health for the District of Columbia, stated:

> "The continued common use of kitchens and bathrooms in so-called 'rooming houses' perpetrates some of the very conditions the Housing Regulations were intended to prevent. The sharing of these facilities by families with children violates the social well being of the family as a basic unit in our community and creates health problems with which the family is unable to cope by itself. The communal use of kitchens and bathrooms by different families provides the means for the spread of infections, increases the difficulties of maintaining sanitary conditions, and tends to disrupt family routine.
>
> "The removal of tenements as a classification of housing will elevate these second class dwelling units to better living quarters, will tend to upgrade neighborhoods, and will bring the District of Columbia into line with national efforts to improve housing across the nation. * * *"
> (Exhibit "B", pp. 73-74; emphasis added.)

In their few remaining months in office, the former Board of Commissioners took no action on the proposed regulations and the District of Columbia Council, without further public hearing, enacted the regulations on November 21, 1967. (Exhibit "C".)

The District Court dismissed the complaint for failure to state a claim upon which relief could be granted and this appeal followed.

SUMMARY OF ARGUMENT

I

By Joint Resolution No. 4 of February 26, 1892 (27 Stat. 394) (now codified as D. C. Code, § 1-226), Congress invested the District of Columbia Commissioners with broad power to promulgate usual and reasonable police regulations for the protection of the health, safety, and welfare of the residents of the District of Columbia. Sections 2403.21 and 5105 of the District of Columbia Housing Regulations, requiring a full bathroom for each dwelling unit and abolishing the tenement category in the District of Columbia, are both reasonable and usual police regulations and are, therefore, clearly within the scope of § 1-226. The application of such regulations to existing buildings does not invalidate them, for a property owner acquires no immunity against the legitimate exercise of the police power merely because he constructed or previously maintained his building in full compliance with prior existing laws.

II

A public hearing is not a constitutional prerequisite to a legislative enactment. Certainly, therefore, appellants were not constitutionally entitled to any additional public hearing before the District of Columbia Council as a condition precedent to the approval of Sections

2403.21 and 5105 of the District of Columbia Housing Regulations. Appellants may adequately protect their right to due process of law by challenging the validity of these regulations in the courts.

III

Regarding municipal regulations passed to protect the health, safety, and welfare of the community, there is a strong presumption of reasonableness and constitutionality. He who challenges such a regulation has the burden of rebutting the presumption. Since there has been no showing that Sections 2403.21 and 5105 of the District of Columbia Housing Regulations have no rational relationship to the purpose of protecting public health and welfare, the presumption of reasonableness and constitutionality remains unrebutted and, accordingly, must prevail.

ARGUMENT

I

The District of Columbia Council had the statutory authority to promulgate the Housing Regulations here involved.

In parts I and II of their brief, appellants contend that the District of Columbia Council was without statutory authority under

D. C. Code (1967), § 1-226, to promulgate the Housing Regulations here in question because such regulations "abolish appellants' businesses" and "operate retroactively" (brief, p. 6).

By Section 2 of Joint Resolution No. 4 of February 26, 1892 (27 Stat. 394) (now codified as D. C. Code, § 1-226), Congress authorized the Board of Commissioners to

> "* * * make and enforce all such reasonable and usual police regulations * * * as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia."[5]

It is clear that by this joint resolution Congress vested the Commissioners "with local legislative power as respects 'reasonable and usual police regulations.' " District of Columbia v. Thompson Co., 346 U. S. 100, 111 (1953). The question to be determined therefore is whether the Housing Regulations here in question fall within the scope of § 1-226. Regarding its scope, § 1-226 has been interpreted as a grant of authority "very general and comprehensive" (Taylor v.

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[5] Under Section 402(4) of Reorganization Plan No. 3 of 1967, D. C. Code (Supp. II, 1969), Title 1, Administration, Appendix, p. 33, the power to make regulations under § 1-226, was transferred from the now superseded Board of Commissioners to the newly created District of Columbia Council.

District of Columbia, 24 App. D. C. 392, 401 (1904). In Siddons v. Edmonston, 42 App. D. C. 459, 465 (1914), the Court, speaking of § 1-226, stated: "* * * It would have been difficult, indeed, for Congress to have used more comprehensive words than this grant of power contains." On the same subject, the Court, in Railroad Co. v. District of Columbia, 10 App. D. C. 111, 126 (1897), observed:

> "The resolution is so general, and so comprehensive in its terms, that * * * we think it clear that Congress intended thereby to increase the powers of the Commissioners to the full extent of those frequently, if not generally, entrusted to municipal corporations. * * *"

More recently, § 1-226 has been construed to authorize the promulgation of fair housing and curfew regulations. See Filippo v. Real Estate Commission, D. C. App., 223 A. 2d 268 (1966), and Glover v. District of Columbia, D. C. App., 250 A. 2d 556 (1969).

It is beyond dispute that a municipality may in the exercise of its police power require that existing buildings used for human habitation meet reasonably prescribed standards in order to protect the health and safety of occupants. 7 McQuillin, Municipal Corporations (3rd ed.), §§ 24.504 and 24.505.[6] And it is also well settled that a

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[6]See also: Guandolo, Housing Codes in Urban Renewal, 25 Geo. Wash. L. Rev. 1 (1956); and note, 69 Harv. L. Rev. 1115 (1956).

municipality may, in the exercise of its police power, require that each dwelling unit contain a fully equipped bathroom. Givner v. Commissioner of Health, 207 Md. 184, 113 A. 2d 899 (1955); City of Louisville v. Thompson, 339 S. W. 2d 869 (Ky., 1960); Paquette v. City of Fall River, 338 Mass. 368, 155 N. E. 2d 775 (1959); Richards v. City of Columbia, 227 S. C. 538, 88 S. E. 2d 683 (1955).

Thus, in promulgating the Housing Regulations here in question, the District of Columbia Council was merely doing what many other municipal governments, in the exercise of their police powers, have already done.

Appellants say that the regulations here involved are invalid because they "operate retroactively" in that they apply to existing buildings (brief, pp. 6-7). Such a contention has been raised in other similar cases and has been rejected. Tenement House Department of City of New York v. Moeschen, 179 N. Y. 325, 72 N. E. 231 (1904), aff'd. per curiam sub nom. Moeschen v. Tenement House Department, 203 U. S. 583 (1906); Queenside Hills Realty Co. v. Saxl, 328 U. S. 80 (1945); City of Seattle v. Hinckley, 40 Wash. 468, 82 Pac. 747 (1905); Adamec v. Post, 273 N. Y. 250, 7 N. E. 2d 120 (1937); Boden v. City of Milwaukee, 8 Wis. 2d 318, 99 N. W. 2d 156 (1959);

Paquette v. City of Fall River, supra; City of Louisville v. Thompson, supra; State v. Schaffel, 4 Conn. Cir. 234, 229 A. 2d 552 (1966).

In Queenside Hills Realty Co. v. Saxl, supra, the United States Supreme Court in upholding the constitutionality of New York's Multiple Dwelling Law, stated:

> "* * * But in no case does the owner of property acquire immunity against exercise of the police power because he constructed it in full compliance with the existing laws * * *." (328 U. S. at 83.)

Appellants further argue that the regulations are invalid because they "deprive the appellants of the continued use of their businesses in a lawful manner" (brief, p. 6).

While the regulations clearly abolish the use of buildings as "tenements", they do not forbid use of appellants' buildings as apartment houses or as rooming houses. But the essential issue is not whether appellants have been deprived of a particular use of their property, but whether the regulations involved are a legitimate exercise of the municipality's police power to protect the health, safety, and well being of the community. As the New York Court of Appeals stated in Adamec v. Post, supra:

> "* * * When a building used as a dwelling house is unfit for that use and a source of danger

to the community, the Legislature in order to promote the general welfare may require its alteration or require that its use for a purpose which injures the public be discontinued; and, subject to reasonable limitation, the Legislature may determine what alterations should be required and what conditions may constitute a menace to the public welfare and call for remedy. * * *" (7 N. E. 2d at 124-125; emphasis added.)

II

Appellants were not entitled by force of the Constitution to a public hearing before the District of Columbia Council on the question of whether Sections 2403.21 and 5105 of the Housing Regulations should have been enacted.

Appellants contend that they were denied due process of law because they were not afforded a public hearing before the body that enacted Sections 2403.21 and 5105 of the Housing Regulations, namely, the newly-created District of Columbia Council.

The simple answer to this contention is that appellants have no general constitutional right to a hearing before the District of Columbia Council when that body is considering the enactment of municipal regulations. Chicago, Burlington and Quincy Railroad Co. v. Nebraska, 170 U. S. 57, 77 (1898); Buttfield v. Stranahan, 192 U. S. 470, 497 (1904); Pittsburgh, C., C. & St. L. Ry. Co. v. Hartford City, 170

Ind. 674, 82 N. E. 787, 789-790 (1907): Norwegian Nitrogen Products Co. v. United States, 288 U. S. 294, 304 (1933). To protect their rights to due process of law, appellants may, as they have chosen to do, challenge the validity of the regulations in the courts. Chicago, Burlington and Quincy Railroad Co. v. Nebraska, supra, 170 U. S. at 77; Pittsburgh, C., C & St. L. Ry. Co. v. Hartford City, supra, 82 N. E. at 789-790.

III

The regulations in question are reasonable because they tend to promote the health and well being of the members of the community.

In contending that Sections 2403.21 and 5105 of the Housing Regulations are unreasonable, appellants argue that "* * * [t]he Government failed to offer evidence in the lower court that the promulgation of these regulations was reasonable and clearly within the public interest. * * *" (Brief, p. 9.)

It is instantly apparent that appellants have failed to realize that municipal regulations passed for the protection of the public health are "* * * protected by a strong presumption of constitutionality. They cannot be declared unconstitutional unless their provisions are clearly arbitrary and unreasonable and have no rational relationship to the

purpose intended. * * *" Jones v. District of Columbia, 116 U. S. App. D. C. 301, 305, 323 F. 2d 306, 310 (1963). Cf. 5 McQuillin, Municipal Corporations (3rd ed.), §§ 18.19, 18.23, 19.05-.06.

The regulations abolishing tenements and requiring a bathroom for each dwelling unit clearly have a rational relationship to the health and welfare of the community. As Dr. Murray Grant, the chief health officer of the District of Columbia, stated: "The communal use of * * * bathrooms by different families provide the means for the spread of infections, increases the difficulties of maintaining sanitary conditions, and tends to disrupt family routine." (Exhibit "B", pp. 73-74.)

Appellants, understandably, have not urged, either in the court below or on appeal, that requiring a private bathroom for each family has "no rational relationship" to promoting public health in the District of Columbia. Rather, they point to the economic hardship the regulations impose on themselves as tenement owners and the possibility that some low-income tenants will be displaced by higher rents or forced to eat in restaurants. [7]

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[7] Appellants state at page 9 of their brief that the regulations here involved affect "at least 25,000 tenants of tenement housing and approximately one thousand tenement house owners." However, Mr. Tudor Strang of the District of Columbia Department of Licenses

Similar arguments have been made and rejected in other cases. As the New York Court of Appeals stated in Tenement House Department of City of New York v. Moeschen, supra:

> "It is a well-recognized principle in the decisions of the state and federal courts that the citizen holds his property * * * subject to the lawful exercise of the police power by the legislature. * * * The necessary and reasonable expenses and loss of property in making reasonable changes in existing structures, or in erecting additions thereto, are damnum absque injuria." (72 N. E. at 232.)

And in Adamec v. Post, supra, the Court was not unmindful that new and more stringent housing regulations might effect the displacement of tenants:

> "* * * The result, as we have said, may be the closing of many tenement houses and the eviction of the tenants. Argument may be made that before the Legislature causes the closing of tenement houses because they are unfit for habitation, provision should be made for better housing elsewhere for the evicted tenants. Such arguments must be addressed to the Legislature. The plaintiff cannot complain to the courts because the Legislature has decided otherwise." (7 N. E. 2d at 125.)

(footnote 7 continued from page 14)
and Inspections stated at the public hearing that, as of 1967, there remained only 763 tenement houses in the District of Columbia, housing approximately 7,600 persons. (Exhibit "B", p. 7.)

It is thus clear that appellants have failed to rebut the presumption of reasonableness which attaches to Sections 2403.21 and 5105 of the Housing Regulations.

CONCLUSION

Upon the foregoing, it is respectfully submitted that appellants have failed to show any illegality in the enactment of Sections 2403.21 and 5105 of the Housing Regulations by the District of Columbia Council. The District Court's order dismissing the complaint for failure to state a claim upon which relief can be granted is, therefore, correct and should, accordingly, be affirmed.

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May 21, 1969